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6 Attorneys for Defendants
7 ROBERT ELMBURG and ROCKY FLICK

8
9 **UNITED STATES DISTRICT COURT**
10
11 **SOUTHERN DISTRICT OF CALIFORNIA**

12 MICHAEL MONTGOMERY,
13 Plaintiff,

14 v.
15 WAL-MART STORES, INC.;
16 KINDERHOOK INDUSTRIES II, L.P.;
17 KINDERHOOK INDUSTRIES, L.L.C.;
18 KINDERHOOK CAPITAL FUND II, L.P.;
CRESTWOOD HOLDINGS, INC.;
BERGAN, L.L.C.; JOHN ELMBURG;
ROBERT ELMBURG; ERIC ELMBURG;
ROCKY FLICK; HOME DEPOT U.S.A.,
INC.; DOES 1 through 20 inclusive,

19 Defendants.

20 Case No.: 12CV3057 L (WVG)

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22 **DECLARATION OF ROCKY
FLICK IN SUPPORT MOTION
TO DISMISS FOR LACK OF
STANDING (12(B)(1)), LACK OF
PERSONAL JURISDICTION
(12(B)(2)), AND FAILURE TO
STATE A CLAIM (12(B)(6))**

23 Date: April 2, 2013
24 Time: 10:30 a.m.
Ctrm: 5B
25 Judge: Hon. M. James Lorenz

26 I, Rocky Flick, declare as follows:

27 1. The statements made in this declaration are based upon my personal
knowledge, except where states upon information and belief, and if called to testify
with regard to the same, I could do so competently.

28 2. At all relevant time to this matter, I have been a resident of Oklahoma.
3. At all relevant time to this matter, I have not owned real or personal
property located in California.

1 4. At all relevant time to this matter, I have not engaged in business in
2 California.

3 5. I have never manufactured gasoline containers.

4 6. I have never manufactured products.

5 7. I have never injected any product into the stream of commerce with an
6 expectation that such product will be sold in California.

7 8. Over my lifetime, I have been to California on a limited number of
8 business trips and family vacations. I have never resided in California.

9 9. Blitz U.S.A., Inc., ("Blitz") is an Oklahoma corporation. At all relevant
10 time to this matter, Blitz's manufacturing facility was located in Miami, Oklahoma.
11 On June 20, 2002, the date of the Montgomery occurrence, Blitz manufactured
12 products in the automotive and pet industry.

13 10. Blitz first employed me in 1988, and I remain so employed. Over the
14 years, I have held the Blitz positions of Vice President of Sales & Marketing, Vice
15 President, General Manager, President, and Chief Executive Officer. I have been a
16 resident of Oklahoma since 1988.

17 11. On September 21, 2007, Crestwood Holdings, Inc., the Blitz parent, sold
18 all Blitz stock to Blitz Acquisitions, LLC, a Delaware limited liability company. Prior
19 to the sale of Blitz stock to Blitz Acquisitions, I was not a direct or indirect owner of
20 Blitz.

21 12. When the Blitz stock sold in September 2007, I had an opportunity to

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1 invest some personal funds into the business and acquire a minority ownership interest
2 in Blitz Holdings, LLC, which subsequently changed its name to LAM 2011
3 Holdings, LLC. LAM 2011 Holdings, LLC, is the corporate great grandparent of
4 Blitz.

5 13. On November 6, 2011, Blitz and its affiliated entities, including LAM
6 2011 Holdings, LLC, filed for bankruptcy protection under Chapter 11 in the matter
7 styled: *In re: Blitz U.S.A., Inc. et al.*, United States Bankruptcy Court for the District
8 of Delaware, Case No. 11-13603-PJW. Such bankruptcy action is currently pending.

9 I declare under penalty of perjury that the foregoing is true and correct, except
10 for those matters stated on information and belief and as to those, I believe them to be
11 true.

12 Executed on this 26th day of February, 2013 at Miami, Oklahoma.

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16 Rocky Flick
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